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**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2019-4937  
May 31, 2019

The Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)<sup>1</sup> at the Department of Human Resource Management (DHRM) in relation to the grievant’s February 28, 2019 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

On or about February 28, 2019, the grievant initiated a grievance with the agency. On April 5, 2019, the agency sent its third step resolution response in the grievance process by certified mail to the grievant. Tracking information from the post office indicates that the response was delivered on April 8, 2019. The third step respondent denied the grievant’s requested relief. The record reflects no further response by the grievant. By letter dated April 26, 2019, the agency notified the grievant by mail<sup>2</sup> that he was out of compliance with the response timeline established by the grievance procedure and advised him that he could correct his noncompliance with an appropriate response within five workdays of the notice. On May 28, 2019, having received no further response from the grievant, the agency requested a compliance ruling allowing it to administratively close the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>3</sup> That process assures that the parties first communicate with each other about the noncompliance and resolve any compliance problems voluntarily, without EDR’s

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<sup>1</sup> The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

<sup>2</sup> The address listed on the notice of noncompliance contains no zip code. As such, we are unable to presume receipt of the notice by the grievant, though it is entirely possible that the grievant has received the notice.

<sup>3</sup> *Grievance Procedure Manual* § 6.3.

involvement. Specifically, the party claiming noncompliance must notify the other party of any noncompliance in writing and allow five workdays for the opposing party to correct it.<sup>4</sup> If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, which may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.<sup>5</sup>

In this case, the available facts show that, contrary to the grievance procedure's requirements, the grievant did not advance or conclude his grievance within five workdays of receiving the agency's third step response.<sup>6</sup> Moreover, three weeks after sending its third step response, the agency sent the grievant notice of his noncompliance and provided him the opportunity to correct it. While it is unclear whether the grievant received the notice of noncompliance, it is evident that more than five workdays have elapsed since the agency provided the grievant with the third step response and the grievant has not responded.

Because the grievant has apparently neither advanced nor concluded his grievance at this time, he has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct his noncompliance **within 10 workdays of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the grievance or request that the agency head qualify the grievance for a hearing. If he does not do so, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EDR's rulings on matters of compliance are final and nonappealable.<sup>7</sup>



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<sup>4</sup> See *id.*

<sup>5</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will typically order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears to be driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

<sup>6</sup> See *Grievance Procedure Manual* § 3.3.

<sup>7</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).